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10/608,590	06/27/2003	James M. Sweet	D/A2555Q	8455
77282	7590	05/18/2009	EXAMINER	
Hoffmann & Baron, LLP 6900 Jericho Turnpike Syosset, NY 11791			HILLERY, NATHAN	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: JAMES M. SWEET, STEVEN J. HARRINGTON, RHYS PRICE
JONES, and ANDREAS SAVAKIS

Application No. 10/608,590
Technology Center 2100

Mailed: May 18, 2009

Before Deborah L. Perry, Supervisory Paralegal Specialist, Review Team.
Perry, Supervisory Paralegal Specialist, Review Team.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on March 24, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

EXAMINER'S ANSWER, EVIDENCE RELIED UPON

Section §1207.02 of the *Manual of Patent Examining Procedure*

(MPEP) (Eighth Edition, Rev. 6, September 2007) states:

(A) CONTENT REQUIREMENTS FOR EXAMINER'S ANSWER. The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

. . . .

- (8) Evidence Relied Upon. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and in the case of nonpatent references, the relevant page or pages.

The Examiner's Answer mailed October 31, 2008, is deficient because the "Evidence Relied Upon" section fails to include the references Huang et al (6601075 B1), Law et al. (6754873 B1), and Prince (US 6877002 B2).

Appropriate correction is required.

EXAMINER'S ANSWER, GROUNDS OF REJECTION

A review of the file finds that the grounds of rejection of the claims as provided in the Examiner's Answer mailed October 31, 2008, under the heading "Grounds of Rejection" is not consistent with the grounds of rejection of claims set forth in the last Office action of record. The grounds of rejection of the claims as provided in the Examiner's Answer must be

consistent with the last Office action of record, including any Advisory action responsive to any after final submissions. Each Grounds of rejection to be reviewed on appeal must be identified and any new grounds of rejection must be provided under a separate heading “New Grounds of Rejection” in the Examiner’s Answer and must include the approval of the TC Director or his/her designee. *See also Manual of Patent Examining Procedure* (MPEP) § 1207.02 and 1207.03 (8th ed. Rev. 6, Sept 2007) for details.

Specifically, the Examiner’s Answer omits the grounds of rejection from the last Office action rejecting: claims 21 and 22 under 35 U.S.C. § 103(a) as unpatentable over Bharat and Earl further in view of Huang; claims 23 and 25 under 35 U.S.C. § 103(a) as unpatentable over Bharat and Earl further in view of Law; and claims 7-9, 11, 19, 20, 24, 31-34, and 45 under 35 U.S.C. § 103(a) as unpatentable over Bharat and Earl further in view of Prince. Although these grounds of rejection have not been presented for review by appellant, all grounds of rejection must be included in Section 9, “Grounds of Rejection” in the Examiner’s Answer. Correction of all Grounds of rejection for all claims is required.

CONCLUSION

Accordingly, it is
ORDERED that the application is returned to the Examiner to:

- 1) issue a PTO-90 citing the missing references listed under the Evidence Relied Upon section, paragraph (8);
- 2) vacate the Examiner's Answer mailed October 31, 2008;
- 3) generate a new Examiner's Answer setting forth the correct Grounds of Rejection and to correct other sections of the Answer as may be required;

and

- 4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DLP/bar

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